SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No.

THOMAS M. LYNCH, JOHN J. MERRILL AND JOHN P. HENNESSEY, AS COMMISSIONERS CONSTITUTING THE STATE TAX COMMISSIONERS OF THE STATE OF NEW YORK, PETITIONERS,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, UPON THE RELATION OF ELIZABETH PIERSON.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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IN COURT OF APPEALS OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Upon the Relation of ELIZABETH G. PIERSON, Relator-Respondent,

against

THOMAS M. LYNCH, JOHN J. MERRILL and JOHN P. HENNESSEY, as Commissioners Constituting the State Tax Commissioners of the State of New York, Respondents-Appellants

STATEMENT UNDER RULE 234

The above entitled proceeding was commenced on the 26th day of February, 1932, by the service on that day by Messrs. Alexander & Green, as attorneys for Elizabeth G. Pierson, the relator above named, on Thomas M. Lynch, John J. Merrill and John P. Hennessey, as Commissioners constituting the State Tax Commission of the State of New York, the respondents above named, of notice of application, returnable on the 11th day of March, 1932, for an order for a writ of certiorari and for a writ, together with copies of the papers upon which the application was to be made.

Upon the hearing of said application on the 11th day of March, 1932, an order for the issuance of a writ of certiorari was made and entered and the writ entered and served.

[fol. 2] On the 8th day of April, 1932, the return was filed.

The names of the original parties to this proceeding in full and of their respective attorneys are above set forth, and no change in the parties or their attorneys has taken place.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

Income Tax for the Year 1928

THE PEOPLE OF THE STATE OF NEW YORK, Upon the Relation of ELIZABETH G. PIERSON, Relator,

against

THOMAS M. LYNCH, JOHN J. MERRILL and JOHN P. HENNESSEY, as Commissioners Constituting the State Tax Commissioners of the State of New York, Defendants

NOTICE OF APPLICATION FOR AN ORDER FOR A WRIT OF CERTIORARI

SIRS: Please take notice that upon the annexed petition of Elizabeth G. Pierson, verified the 11th day of February, 1932, an application will be made on her behalf at a Special [fol. 3] Term of the Supreme Court of the State of New York, in and for the County of Albany, on the 11th day of March, 1932, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a writ of certiorari directed to Thomas M. Lynch, John J. Merrill, and John P. Hennessey, as Commissioners constituting the State Tax Commission of the State of New York, as prayed in said petition, and for such other and further order or relief as may be proper.

Dated, New York, February 24th, 1932.

Yours, etc., Alexander & Green, Attorneys for Applicant, Office & P. O. Address: No. 120 Broadway, Borough of Manhattan, City of New York, N. Y.

To Thomas M. Lynch, John J. Merrill, and John P. Hennessey, as Commissioners constituting the State Tax Commission of the State of New York.

[fol. 4] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

PETITION FOR AN ORDER THAT A WRIT OF CERTIORARI ISSUE

The petition of Elizabeth G. Pierson respectfully shows:

First.—The petitioner is a married woman and at the time hereinafter mentioned resided with her husband in the City, County and State of New York.

Second.—Defendants are the Commissioners constituting the State Tax Commission of the State of New York.

Third.—In April, 1929, petitioner duly made a personal income tax return for the year 1928, pursuant to the Tax Law of New York and Section 367 thereof, and paid to the [fol. 5] Tax Commissioner the amount of tax payable as the same appeared from the face of such return.

Fourth.—Under date of July 14, 1930, the State Tax Commission recomputed petitioner's tax for the year 1928 and assessed petitioner for an additional tax of $76.16 for said year.

Fifth.—On or about September 18, 1930, petitioner duly made application pursuant to Section 374 of the Tax Law for a revision of such assessment, and on or about December 7, 1931, the Tax Commission made its determination denying the same. Copies of said determination and of the affidavit of Charles W. Pierson therein mentioned are hereto annexed, marked Schedule A and Schedule B respectively.

Sixth.—Petitioner is advised and on information and belief alleges that such determination is erroneous and that said assessment is illegal and void and that she is injured and aggrieved thereby, on the grounds that it is computed and imposed upon rental income from real estate situated in Ohio and profit on sale of real estate situated in Ohio and such income and such profit are not taxable by the State of New York and that the tax sought to be imposed thereon would be in substance and effect a tax upon property situated outside the State of New York and would violate petitioner's rights under the Constitution and laws of New York and under the Constitution of the United States and the Fourteenth Amendment thereof.

[fol. 6] Seventh.—Petitioner has heretofore deposited with and paid to the Tax Commission under protest the full amount of the taxes, interest, and other charges audited and stated in such determination and has duly filed an undertaking for costs and charges approved by a Justice of the Supreme Court in compliance with the provisions of Section 375 of the Tax Law.

Eighth.—No previous application for the writ herein sought has been made to any court or judge.

Wherefore, the petitioner prays that the said determination of the State Tax Commission may be reviewed and said assessment vacated and that a writ of certiorari may issue out of this Court to the defendants as Commissioners constituting the State Tax Commission of the State of New York, commanding them to make return to said writ pursuant to law and that the petitioner may have such other and further order or relief as may be proper.

Dated, New York, February 11, 1932.

Elizabeth G. Pierson, Petitioner. Alexander & Green, Attorneys for Petitioner, Office and P. O. Address: No. 120 Broadway, Borough of Manhattan, City of New York, N. Y.

(Verified by Elizabeth G. Pierson, Feb. 11, 1932.)

[fol. 7] SCHEDULE A TO PETITION

THE STATE TAX COMMISSION, STATE OF NEW YORK

In the Matter of the Application for Revision of Income Tax Assessed Against ELIZABETH G. PIERSON for the Year 1928

A return of income on behalf of the above named taxpayer for the calendar year 1928 having been duly filed at the time when required by statute in accordance with the provisions of Article 16 of the Tax Law; and on audit of such return, an additional tax having been found due for such period in the amount of $76.16, which tax was duly assessed under date of July 14th, 1930, assessment notice No. 490501; and the petitioner having duly made application under Section 374 of the Tax Law for a recomputation and revision of such assessment; and the matter having come on for informal hearing at the New York office on July 2nd, 1931, before First Assistant Director Roy H. Palmer and affidavit of Charles W. Pierson having been duly submitted and a formal hearing having been waived, and it appearing that there are no questions of fact but only questions of law involved, now it is

Determined That the computation of the additional tax against the said taxpayer for the year 1928 in accordance with the audit of such return was correct, and that the

additional tax so stated was properly assessed and due; and does not include any taxes or other charges which [fol. 8] should not have been lawfully demanded, and that no payment has been illegally made or exacted thereupon; and that the petitioner is not entitled to any further resettlement of the tax so assessed.

Dated, Albany, N. Y., December 7th, 1931.

The State Tax Commission, (Signed) Thos. M. Lynch, Commissioner; John J. Merrill, Commissioner.

SCHEDULE B TO PETITION

In the Matter of the State Income Tax for 1928 of ELIZABETH G. PIERSON, of 925 Park Avenue, New York City, New York

STATE OF NEW YORK,
County of New York, ss:

Charles W. Pierson, being duly sworn, says:

Deponent is a resident of the State of New York and the husband of Elizabeth G. Pierson, the taxpayer above named.

The taxpayer, who was a resident of the State of Ohio at the time of her marriage, inherited from her father prior to 1928 certain real estate situated at Cincinnati, Ohio. In the year 1928, the taxpayer received rental [fol. 9] income of $2,223.72 from such real estate and a profit on sale of portions of such real estate amounting to $1,584.31. Said income and said profit were not included in her return of taxable income for the year 1928 for the reason, as stated in the return, that she was advised that they were not taxable by the State of New York. The State Tax Commission under date of July 14, 1930, recomputed the tax for the year 1928 and imposed an additional tax of $76.16, being 2% of $3,808.03, the aggregate of said two items.

The taxpayer has made application, pursuant to Section 374 of the Tax Law, for a revision of such additional assessment, alleging in her application that said items of rental income from real estate situated in Ohio and profit on sale of real estate situated in Ohio are not taxable by the State of New York and that a tax imposed thereon by the State